



4. The *sole wrong* alleged in Crisswell's Complaint is that MySpace is transmitting commercial electronic mail messages without the consent of recipients and without providing a mechanism to opt out of such messages. As such, all of Crisswell's claims should be dismissed as preempted by the CAN-SPAM Act. Furthermore, because the CAN-SPAM Act does not provide a private cause of action for private individual citizens, Crisswell cannot save this action by amending his complaint to include a CAN-SPAM Act claim.

5. CDA Section 230 shields interactive computer services such as MySpace from liability for messages sent by third parties, which is precisely the conduct complained of by Crisswell.

WHEREFORE, for the reasons set forth above and in its supporting memorandum, defendant MySpace, Inc., respectfully requests that the Court dismiss Plaintiff's claims with prejudice.

Dated: June 13, 2008

Respectfully submitted,  
MYSPACE, INC.

By: /s/ David R. Geerdes

One of its attorneys

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2008, I electronically filed the foregoing MYSPACE, INC.'S FED. R. CIV. P. 12(B)(6) MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which will send notification of such filing to registered parties.

/s/ David R. Geerdes  
David R. Geerdes  
Attorney for defendant MySpace, Inc.